

S168302

Case No.: _____

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

**SUPREME COURT
FILED**

Equal Rights Advocates and California Women's Law Center,

Petitioners

NOV 17 2008

v.

Mark D. Horton, in his official capacity as State Registrar of Vital Statistics of the
State of California and Director of the California Department of Public Health;
Linette Scott, in her official capacity as Deputy Director of Health Information & Strategic Planning for the California Department of Public Health; and Edmund
G. Brown, Jr., in his official capacity as Attorney General for the State of
California,

Frederick K. O'Brien Clerk

Deputy

Respondents

**PETITIONERS' MOTION FOR JUDICIAL NOTICE IN
SUPPORT OF PETITION FOR WRIT OF MANDATE;
DECLARATION OF MARK A. KRESSEL; PROPOSED ORDER**

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Counsel for Petitioners

REQUEST AND MOTION FOR JUDICIAL NOTICE

Pursuant to Evidence Code section 452 and Rules of Court 8.252(a) and 8.54(a), Petitioners Equal Rights Advocates and California Women's Law Center (collectively, "Petitioners") hereby move the Supreme Court for an order that judicial notice be taken of the following document:

(A) The Official Title and Summary of Proposition 8, as included in the ballot materials pertaining to Proposition 8, issued by the Secretary of State. A copy of this document is attached to the Declaration of Mark A. Kressel ("Kressel Declaration") as Exhibit A.

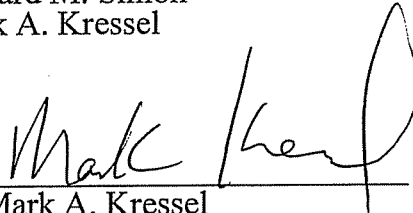
This motion is made on the ground that this document is relevant to the issues raised in Petitioners' Petition for Writ of Mandate. This motion is based on this Request and Notice of Motion, the accompanying Memorandum of Points and Authorities, the Kressel Declaration, and such other matters as may properly come before the Court.

Dated: November 17, 2008

Respectfully submitted,

IRELL & MANELLA LLP
Laura W. Brill
Moez A. Kaba
Richard M. Simon
Mark A. Kressel

By


Mark A. Kressel
Attorneys for Petitioners

MEMORANDUM OF POINTS AND AUTHORITIES

Evidence Code section 459 empowers a reviewing court to take judicial notice of any matter specified in Evidence Code section 452.

Evidence Code sections 452(c) and 452(h) permit the Court to take notice of “[o]fficial acts of the legislative, executive, and judicial departments . . . of any state of the United States” and “[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.”

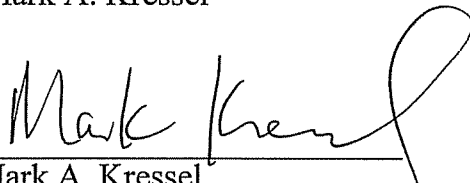
Pursuant to these provisions, Petitioners Equal Rights Advocates and California Women’s Law Center (collectively, “Petitioners”) ask this Court to take judicial notice of the Official Title and Summary of Proposition 8, as included in the ballot materials pertaining to Proposition 8, issued by the Secretary of State. The ballot materials are official publications issued by the Secretary of State. They are official acts of the government of this State and their contents are facts that are “not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.” Cal. Evid. Code § 452(c), (h). These materials, which include the Official Title and Summary, are regularly the subject of judicial notice. *See People v. Canty*, 32 Cal. 4th 1266, 1281 n.4 (2004) (noticing ballot materials pertaining to Proposition 36 of the November 2000 general election). The Official Title and Summary is

relevant because it reflects the change that Proposition 8 would cause to the California Constitution.

For the foregoing reasons, Petitioners respectfully request that this Court take judicial notice of the document submitted with this Motion as an exhibit to the accompanying Declaration of Mark A. Kressel.

Respectfully submitted,

IRELL & MANELLA LLP
Laura W. Brill
Moez M. Kaba
Richard M. Simon
Mark A. Kressel

By 
Mark A. Kressel
Attorneys for Petitioners
Equal Rights Advocates and
California Women's Law
Center

DECLARATION OF MARK A. KRESSEL

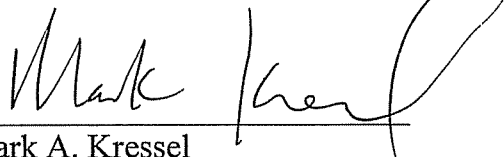
I, Mark A. Kressel, declare as follows:

1. I am an attorney with the law firm of Irell & Manella LLP, counsel of record for the Petitioners in the above-captioned matter. I am a member in good standing of the State Bar of California. I have personal knowledge of the matters set forth herein, and if called as a witness could and would competently testify thereto.

2. Attached as Exhibit A is a true and correct copy of the Official Title and Summary of Proposition 8, as found in the ballot materials pertaining to Proposition 8, published on the website of the Secretary of State for the State of California. This portion of the ballot materials is available at and was printed from <http://www.voterguide.sos.ca.gov/title-um/pdf/prop8-title-summary.pdf>.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 17th day of November, 2008, at Los Angeles,
California.



Mark A. Kressel

[PROPOSED] ORDER

Good cause appearing therefore,

IT IS HEREBY ORDERED that the Supreme Court will take
judicial notice of the following document: Official Title and Summary of
Proposition 8, as published on the website of the Secretary of State for the
State of California.

Dated: _____, 2008

Justice, Supreme Court

EXHIBIT A

**ELIMINATES RIGHT OF SAME-SEX COUPLES TO MARRY.
INITIATIVE CONSTITUTIONAL AMENDMENT.**

OFFICIAL TITLE AND SUMMARY

PREPARED BY THE ATTORNEY GENERAL

ELIMINATES RIGHT OF SAME-SEX COUPLES TO MARRY. INITIATIVE CONSTITUTIONAL AMENDMENT.

- Changes the California Constitution to eliminate the right of same-sex couples to marry in California.
- Provides that only marriage between a man and a woman is valid or recognized in California.

Summary of Legislative Analyst's Estimate of Net State and Local Government Fiscal Impact:

- Over the next few years, potential revenue loss, mainly from sales taxes, totaling in the several tens of millions of dollars, to state and local governments.
- In the long run, likely little fiscal impact on state and local governments.

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PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 1800 Avenue of the Stars, Suite 900, Los Angeles, California 90067-4276.

On November 17, 2008, I served the foregoing document described as Petitioners' Motion for Judicial Notice in Support of Petition for Writ of Mandate; Declaration of Mark A. Kressel; Proposed Order on each interested party, as stated on the attached service list.

☒ (BY EXPRESS MAIL) I placed a true copy of the foregoing document in a sealed envelope addressed to each interested party, as stated on the attached service list. I placed each such envelope, with Express Mail postage thereon fully prepaid, for collection and mailing at Irell & Manella LLP, Los Angeles, California. I am readily familiar with Irell & Manella LLP's practice for collection and processing of Express Mail to be sent by the United States Postal Service. Under that practice, the Express Mail would be deposited on that same day in the ordinary course of business in a post office, mailbox, sub-post office, substation, mail chute, or other like facility regularly maintained by the United States Postal Service or receipt of Express Mail.

Executed on November 17, 2008, at Los Angeles, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Mark Kressel

(Signature)

SERVICE LIST

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